

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ERIE COUNTY ENVIRONMENTAL
COALITION, et. al.,
Plaintiffs**

v.

**MILLCREEK TOWNSHIP SEWER
AUTHORITY, et. al.,
Defendants**

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**)CIVIL ACTION NO. 05-59 ERIE
)ELECTRONICALLY FILED**

**MOTION FOR LEAVE TO FILE
OUT OF TIME PLAINTIFFS' CONCISE STATEMENT OF FACTS AND
APPENDIX IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, Erie County Environmental Coalition, PennEnvironment, and the Gaia Defense League (hereinafter collectively known as "Plaintiffs"), by and through Counsel, hereby aver as follows:

1. Motions for Summary Judgment remain outstanding in the above-captioned matter.
2. On April 21, 2006, Plaintiffs filed a Motion for Leave to Amend Its Motion For Summary Judgment By Filing Appendix and Filing an Amended Concise Statement of Material Facts.
3. On the afternoon of February 19, 2008, this Honorable Court issued an Order which, *inter alia*, granted Plaintiffs' April 21, 2006 Motion and directed "to the extent that the contents of these documents has not previously been filed, Plaintiff shall do so on or before March 1, 2008."

4. On February 20, 2008, Counsel for Plaintiffs was out of the office for health care appointments and for the initiation of proceedings in another matter in the state court system.
5. On February 21, 2008, Counsel for Plaintiffs departed upon a week-long family trip to California. Counsel contracted illness during the trip.
6. Upon return home, Counsel consulted with a physician on February 28, 2008, and was diagnosed with acute bronchitis.
7. Counsel has experienced dizziness and severe fatigue through and beyond the Court's March 1 date for filing the Appendix and Statement of Facts which has made it impossible for Counsel to successfully meet this deadline, and resulted in Counsel missing work on Friday, Monday, and on Tuesday morning.
8. Counsel needed considerable time to prepare the Amended filings, this being the first action necessary since the withdrawal of previous lead counsel for Plaintiffs, Attorney Murphy.
9. Under the circumstances, the granting of Leave to File Out of Time serves the interests of justice. Counsel's inability to meet the Court's deadline does not reflect any lack of respect for the Court's schedule but rather is due entirely to a combination of unfortunate timing of previously committed travel plans and significant personal illness over which Counsel had no control. The documents to be provided in the Appendix will ensure that the Court has a more complete record from which to analyze the issues and craft its decision in this matter.

10. The filing of the Appendix several days after the deadline will not have an adverse effect upon the timing of the Court's ruling on the Motions for Summary Judgment, since a March 14, 2008 deadline for filing of a response to Defendants' Sur-Reply Brief remains open. Thus, judicial economy will not be impacted in a significant way by the granting of the relief requested.
11. Likewise, the Defendants in this matter will not be prejudiced by the late filing, since it supports Plaintiffs' motions filed nearly two years ago and for which all Defendants' briefing has been concluded.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant the present Motion for Leave to File Out of Time Plaintiffs' Concise Statement of Facts and Appendix in Support of Its Motion for Summary Judgment.

Respectfully submitted,

/s/ Michael D Fiorentino
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Attorney for Plaintiffs

Dated: March 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Motion for Leave to File Out of Time Plaintiffs' Concise Statement of Facts and Appendix in Support of Its Motion for Summary Judgment by electronic means utilizing the Court's CM/ECF system that will serve notice of electronic filing to Mark J. Shaw, Esq., McDonald, Illig, Jones & Britton, LLP, Attorney for Defendants on this 5th day of March, 2008.

/s/ Michael D. Fiorentino

Michael D. Fiorentino

PA Atty. ID #73576

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